IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

MFA.No. 1130 of 2000(C)

OPMV.983/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM

APPELLANT: 3RD RESPONDENT:

UNITED INDIA INSURANCE CO. LTD., BRANCH OFFICE, XAVIER BUILDINGS, NAGERCOIL, REPRESENTED BY ITS ASSISTANT MANAGER, UNITED INDIA INSURANCE COMPANY LTD., THIRDPARTY CLAIMS CELL, IV, VETTUKATTIL BUILDINGS, JOSE JUNCTION, KOCHI – 16.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

RESPONDENTS: APPLICANT & RESPONDENTS 1 & 2:

1. VIJAYAKUMAR, S/O.ACHUTHAN PILLAI, THOPPILVILAKOM VEEDU, ALINAYARA, THUNDATHIL P.O., THIRUVANANTHAPURAM, (DIED)

2. A.JASMIN KHAJA, W/O.KHAJAKHAN,T.C.20/1086(1) KUNCHALUMMOODU, KARAMANA, THIRUVANANTHAPURAM.

3. AMBUJAKSHAN, S/O.GOVINDA PANICKER, VATTAKUZHY, PLAVILA PUTHEN VEEDU, KARODE, VILAPPIL, THIRUVANANTHAPURAM (DIED)

ADDL.4. C.SULOCHANA, W/O.LATE AMBUJAKSHAN, PANCHIKODE, KANNERU PUTHEN VEEDU, ATHIYANNOOR, ARALUMMOODU P.O., THIRUVANANTHAPURAM.

" 5. BIJU, S/O.LATE AMBUJAKSHAN, PANCHIKODE, KANNERU PUTHEN VEEDU, ATHIYANNOOR, ARALUMMOODU P.O., THIRUVANANTHAPURAM.

" 6. SMAT.MINI MOLE, W/O.LATE VIJAYAKUMAR, PERAMCHIRA, KIZHAKKUMBAGHOM, JAGADA BHAVAN, KAZHAKUTTOM P.O., THIRUVANANTHAPURAM.

" 7. ANIKA VIJAYAKUMAR (MINOR), D/O.LATE VIJAYAKUMAR, REPRESENTED BY NEXT FRIEND AND GUARDIAN MOTHER SMT. MINI MOLE, OF -DO- -DO-

" 8. SMT.RADHAMMA, M/O.LATE VIJAYAKUMAR, PERAMCHIRA, KIZHAKKUMBAGOM, JAGADA BHAVAN, KAZHAKUTTOM P.O., THIRUVANANTHAPURAM.

ADDL.R4 & R5 ARE IMPLEADED VIDE ORDER DATED 3.7.2002 ON C.M.P.NO.1132/2002.

ADDL.R6 TO R8 ARE IMPLEADED VIDE ORDER DATED 27.3.2006 I.A.NO.2180/2003.

R2 BY ADV. SRI.MOHAN JACOB GEORGE
SRI.MANI KURIEN
R4 & R5 BY ADV. SRI.D.SAJEEV
SRI.MADATHIL.S.ANIL KUMAR
SMT.D.JAMEELA DEVI

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 14/02/2007, ALONG WITH MFA NO. 1131 OF 2000 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.M.P.NO.6448/2000 IN M.F.A.NO.1130/2000

DISMISSED

14/2/2007 SD/- K.T.SANKARAN, JUDGE

//TRUE COPY//

ahz/

K.T. SANKARAN, J.

M.F.A.NO. 1130 & 1131 OF 2000

Dated this the 14th day of February,2007

JUDGMENT

Appellant is the third respondent in O.P.(MV) Nos.983 of 1995 and 984 of 1995, on the file of the Motor Accidents Claims Tribunal, Thiruvananthapuram. The applicants in the Original Petitions were travelling on a motor bike, bearing Registration No.KET.9634 on 9.4.1994, when the accident occurred. The Ambassador car, bearing Registration No.KEE.2102, driven allegedly in a rash and negligent manner, by the second respondent before the court below, hit on the motor bike. The rider and pillion rider of the motor bike sustained injuries and they claimed compensation of Rs.60,000/- and Rs.1,20,000/- respectively.

2. The appellant contended that it has no liability as there was no policy coverage on the date of accident, namely, 9.4.1994. It was contended that Ext.B1 policy is effective from 11.4.1994 to 10.4.1995.

Ext.B2 is the Cover Note issued on 9.4.1994 stating that the effective date and time of commencement of insurance for the purpose of the Act would be 11.4.1994.

3. The Tribunal found that the accident occurred due to the rash and negligent driving of the car by the second respondent in the Original Petitions (third respondent in these appeals). The Tribunal also found that the applicants before it are entitled to compensation. A common award was passed and the Tribunal held that the petitioner in O.P.(MV) No.983 of 1995 is entitled to realise a sum of Rs.12,650/- as compensation from the appellant herein. Similarly, it was held that the petitioner in O.P.(MV) No.984 of 1995 is entitled to recover an amount of Rs.22,750/- and that the third respondent in the Original Petitions is liable to pay the amount.

4. Learned counsel appearing for the appellant submitted that the Tribunal did not consider the

contentions raised by the appellant with reference to Exts.B1 and B2 and the evidence on record. There is no discussion at all in the judgment as to whether there was valid policy as on the date of the accident. He relied on the decision in **New India Assurance Co. Ltd.** v. **Sita Bai and others** ((1999) 7 SCC 575) and contended that there could be a special contract in the cover note/policy and the date of commencement of the coverage would be what is agreed between the parties as per the special contract. He also relied on the decisions in **M/s.National Insurance Co. Ltd.** v. **Smt.Jijubhai Nathuji Dabhi and others** (AIR 1997 SC 2147) and **Oriental Insurance Co. Ltd**. v. **Sunita Rathi and others** (AIR 1998 SC 257). The learned counsel for the second respondent, on the other hand, relied on the decision in AIR 1990 Kerala 202 and 2006 (3) KLT SN Case No.39 and contended that there could be no agreement fixing the date of coverage at a later point of time.

5. Since the Tribunal has not decided the

disputed question of fact based on the evidence adduced in the case, I am of the view that the Tribunal should be directed to consider the case on the merits touching upon this point, taking into account the relevant facts and evidence on record. The counsel appearing for the parties submitted that they may be afforded an opportunity to adduce such other evidence to substantiate their respective contentions. The Tribunal shall allow the parties to adduce such other evidence, either documentary or oral or both, and decide the question of coverage after adverting to all the relevant facts.

In the result, the common award passed by the Tribunal in O.P.(MV) Nos.983 of 1995 and 984 of 1995 are set aside and the matter is remanded for fresh disposal in accordance with law and in the light of the observations contained above. It is made clear that the finding on issue No.1 that the accident occurred due to the rash and negligent driving of the car by the second respondent in the O.P.(MV)Nos.983 and 984 of

1995 is confirmed. The finding of the Tribunal that the applicants before it are entitled to compensation, and the amount of compensation fixed by the Tribunal, are also not being interfered with in these appeals and those findings are also confirmed. The Tribunal shall dispose of the matter as expeditiously as possible. Parties shall appear before the Tribunal on 2.4.2007.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

M.F.A.NO.1130 OF 2000
and
M.F.A.NO. 1131 OF 2000

JUDGMENT

14th February, 2007